

December 2003

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.12 Motion to Dismiss for Delay in Arrest Resulting in Prejudice to Defendant

Insert the following language at the end of the first paragraph on page 14:

See also *People v Musser*, ___ Mich App ___, ___ (2003) (defendant could not show actual and substantial prejudice where a defense witness' testimony in support of the defendant never wavered, even though the record showed that the witness "was exposed to intense cross-examination regarding his memory of the events" that occurred 13 months before defendant's arrest).

6.15 Motion for Compulsory Process of a Defense Witness or Appointment of an Expert Witness at Public Expense

Insert the following language after the second full paragraph on page 23:

In *People v Tanner*, ___ Mich ___, ___ (2003), the Michigan Supreme Court reversed the holding of the Court of Appeals in *People v Tanner*, 255 Mich App 369 (2003). The Court found that because the prosecutor's DNA evidence offered at trial was entirely exculpatory, the defendant could not show that she could not safely proceed to trial without a DNA expert. *Id.* at _____. In regards to the serology evidence that was offered at trial, the Court noted that the prosecution's expert witness testified that "possibly millions" of people shared the same blood profile as in the sample found at the scene. The Court held that the defendant did not show that an expert serologist would offer testimony that would "likely benefit the defense." *Id.* at _____. Therefore, the Michigan Supreme Court reversed the holding of the Court of Appeals and remanded to the trial court for reinstatement of the defendant's felony-murder conviction. *Id.* at _____.

6.24 Motion to Dismiss Because of Double Jeopardy— Multiple Punishments for the Same Offense

Insert the following language near the bottom of page 56 before the last full paragraph:

In *People v Calloway*, ___ Mich ___, ___ (2003), the Michigan Supreme Court held that a defendant's convictions for felony-firearm and felon-in-possession do not violate federal or state prohibitions against double jeopardy. With the exception of the four felonies enumerated in the felony-firearm statute, the Legislature clearly intended that an additional felony charge and penalty may be imposed against a person who possesses a firearm during the commission of a felony.